

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

LAS VEGAS, NEVADA

In re: USA COMMERCIAL MORTGAGE) AUGUST 4, 2006
COMPANY,) E-Filed: 09/07/06
)
Debtor.) Case No.
) BK-S-06-10725-LBR
_____) Chapter 11

TRANSCRIPT OF PROCEEDINGS
OF
MOTION FOR RELIEF FROM STAY, NO. 863
AND
MOTION TO DISTRIBUTE FUNDS
AND TO GRANT ORDINARY-COURSE RELEASES
AND DISTRIBUTE PROCEEDS, NO. 847
AND
MOTION FOR RELIEF FROM STAY, NO. 903
VOLUME 1
BEFORE THE HONORABLE LINDA B. RIEGLE
UNITED STATES BANKRUPTCY JUDGE

Wednesday, August 16, 2006

9:30 a.m.

Court Recorder: Helen C. Smith

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 APPEARANCES:

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9 of USA Capital
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10 LLC: CANDACE C. CARLYON, ESQ.
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11 For the Official
12 Committee of Executory
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USA Commercial
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16 For Standard Property
17 Development, LLC: ANDREW M. BRUMBY, ESQ.
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22 For the Jones Vargas
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25

1 APPEARANCES (Cont.):

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5 For Peter Bolino: JOHN J. LAXAGUE, ESQ.
6 Cane Clark, LLP
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8 For Don Smith, M. BEN BATEMAN, ESQ.
9 et al.: Amarillo, Texas

10 For the Unsecured ROB CHARLES, JR., ESQ.
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13 For the United States BARRY H. JENKINS, ESQ.
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16 For Dr. Stanley ROBERT C. LePOME, ESQ.
17 and Others: Law Offices of Robert C. LePome
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18 Las Vegas, Nevada 89101

19 Also Present: DUSTIN A. JOHNSON
20
21
22
23
24
25

1 (Court convened at 09:43:35 a.m.)

2 THE CLERK: All rise. Bankruptcy court is now in
3 session.

4 THE COURT: Be seated. Okay.

5 USA Commercial.

6 Appearance, please.

7 MR. SCHWARTZER: Lenard Schwartzer and
8 Annette Jarvis for the debtors.

9 MS. CARLYON: Good morning, your Honor.
10 Candace Carlyon of Shea & Carlyon on behalf of the First
11 Trust Deed Fund Committee.

12 MR. GARMAN: Your Honor, Greg Garman on behalf of
13 the Official Committee of Executory Contract Holders.

14 MS. LORADITCH: Good morning, your Honor.
15 Anne Loraditch of Beckley Singleton on behalf of Diversified
16 Trust Fund Committee.

17 MR. BRUMBY: Good morning, your Honor. My name is
18 Andy Brumby. I'm with a law firm called Shutts & Bowen in
19 Orlando, Florida. I'm here on behalf of Standard Property
20 Development, LLC.

21 MR. STEPHENS: Good morning, your Honor.
22 David Stephens, Standard Property.

23 MS. CHUBB: Good morning. Janet Chubb for the
24 Jones Vargas Direct Lenders.

25 MS. CADISH: Good morning, your Honor.

1 Elissa Cadish on behalf of Rolland Weddell and Spectrum
2 Financial Group.

3 MR. LAXAGUE: Good morning, your Honor.
4 Joe Laxague on behalf of Peter Bolino, one of the individual
5 defendants in the Standard Property Development lawsuit.

6 MR. BATEMAN: Good morning, your Honor.
7 Ben Bateman on behalf of Don Smith (phonetic), et al.

8 (Colloquy not on the record.)

9 THE COURT RECORDER: I'm sorry. Would you spell
10 your last name for the record, please?

11 MR. BATEMAN: Bateman is B-a-t-e-m-a-n.

12 THE COURT RECORDER: Thank you.

13 MR. BATEMAN: Thank you.

14 MR. CHARLES: Rob Charles from Lewis and Roca. We
15 represent the Unsecured Creditors Committee. One of the
16 committee members is a defendant in the Florida lawsuit.
17 Obviously, we do not represent them in that capacity.

18 MR. JENKINS: Barry Jenkins for the U.S. Trustee.

19 THE COURT: Okay. We don't have either of the
20 Fund attorneys here today, right?

21 (Colloquy not on the record.)

22 THE COURT: Yes.

23 MR. SCHWARTZER: Yes. They're --

24 THE COURT: Oh, Fund. That's right.

25 MS. CARLYON: Actually, Ms. Loraditch and I are

1 actual attorneys, your Honor, so --

2 THE COURT: I'm sorry. I had you with a different
3 group.

4 MS. CARLYON: It's been hard to tell.

5 THE COURT: No. No. I keep forgetting that
6 you -- I keep putting you with the hairball committee, the
7 HEI (sic), but Mr. Garman's committee. I'm sorry.

8 (Colloquy not on the record.)

9 MS. CARLYON: Oh, yeah. I feel much better.

10 MR. GARMAN: Wait now.

11 MS. CARLYON: Thank you, your Honor.

12 UNIDENTIFIED SPEAKER: I want to give you a
13 (indiscernible).

14 THE COURT: The only reason --

15 (Colloquy not on the record.)

16 THE COURT: The only reason I say that is the
17 initials HE, Holders of Executory --

18 MR. GARMAN: I gave up and go with direct lenders.

19 UNIDENTIFIED SPEAKER: HE --

20 THE COURT: Right. HEC --

21 UNIDENTIFIED SPEAKER: HEC, yeah.

22 THE COURT: Right. If you try to pronounce that,
23 you get an odd-sounding sound. That's the only reason I
24 said that. I apologize. You're right.

25 The reason I asked was if I take on our status -- and

1 I'm going to have Mr. Schwartzer, of course, give us an
2 overview first.

3 But if I take the motion to distribute first, would
4 that enable you -- do you have any interest in the lift-stay
5 motion such you'd be able to then leave after -- or that.
6 I'm just trying to do order. I'm trying to conserve your
7 time.

8 MS. CARLYON: Join us at the adult table,
9 Mr. Garman.

10 THE COURT: Yeah.

11 MS. CARLYON: Your Honor, we filed an opposition
12 to the Standard Property lift-stay motion. We are
13 interested in that one. I do plan to monitor the entire
14 hearing.

15 THE COURT: Okay.

16 MS. LORADITCH: And, your Honor, we did not file
17 any pleadings with --

18 THE COURT RECORDER: I'm sorry, Counsel. I need
19 you to speak into a microphone, please.

20 THE COURT: And it's all right if you're seated.

21 Thank you.

22 MS. LORADITCH: We did not file. The Diversified
23 Committee didn't file any pleadings with respect to the stay
24 motions, but I do intend to stay for the duration --

25 THE COURT: Okay.

1 MS. LORADITCH: -- so that we can monitor as well.

2 THE COURT: Okay. All right. That's fine.

3 MS. LORADITCH: Thank you.

4 MR. SCHWARTZER: Well, good morning, your Honor.

5 On behalf of the debtors, I'd like to report the following:

6 With regard to the motion for relief from stay filed by

7 Standard Property, there is an agreement with Mr. Brumby to

8 continue that to September 28th to allow some time for

9 negotiations.

10 The basic problem Standard Property has is that they

11 have a condominium-conversion project to purchase in

12 first -- a first construction draw were made.

13 And they were looking forward to additional funding

14 which USA Commercial Mortgage at this time can't provide

15 without some arrangements with one finding a source of

16 funding which may be available and, number two, getting some

17 approval from the mortgage-lending division similar to what

18 we did with regard to the Rio Rancho property where we got

19 the Fertitta Enterprises to make the additional loan to

20 complete the construction, and we're going to be working

21 towards a solution; however, we're continuing here, so we're

22 continuing the motion to lift stay until September 28th.

23 There is also an agreement by Mr. Brumby that the

24 individual direct lenders who are currently defendants in

25 the lawsuit filed in Florida will have until October 10th

1 before they have to file any answers.

2 There's also an agreement that if we file a complaint
3 and a motion for a preliminary injunction against the
4 litigation in Florida that we have to give Mr. Brumby
5 25-days' notice.

6 So, for example, if we want that heard on
7 September 28th, we'd have to file it no later than
8 September 3rd I think is the last date because of the
9 weekend, holiday weekend.

10 In addition, we've agreed to provide Standard
11 Properties with an accounting of the funds held in the
12 interest-reserve account in escrow, and we will do that
13 shortly. I don't recall if there's a time on that.

14 MS. JARVIS: Next week.

15 MR. SCHWARTZER: Next week?

16 MS. JARVIS: Next week.

17 MR. SCHWARTZER: Next week. So on that basis, the
18 motion to lift stay regarding Standard Property should be
19 continued to September 28th.

20 THE COURT: All right. Thank you.

21 MR. GARMAN: Yeah. I --

22 MR. SCHWARTZER: The next item I --

23 THE COURT: Wait.

24 Mr. Garman, do you have a --

25 MR. GARMAN: I have some comments on the Standard

1 motion.

2 THE COURT: Even though it's going to be
3 continued?

4 MR. GARMAN: Well, there are a few difficulties
5 from our side. I think we're 90 percent there. I don't --

6 THE COURT: Have you --

7 MR. GARMAN: -- know --

8 THE COURT: -- talked about it first?

9 MR. GARMAN: It was brought up to me five minutes
10 before the hearing. And until you took the bench, we were
11 talking about, and I think we've worked through most of it.

12 THE COURT: Oh, all right.

13 MR. GARMAN: But --

14 THE COURT: Well, what we'll do is before we do
15 that I'll take a recess at some point, so you can talk about
16 it some more.

17 I mean, I certainly have no problem resolving the
18 issues that need to be resolved, but I don't want to just be
19 the person who sits here while you two negotiate back and
20 forth, so --

21 MR. SCHWARTZER: The second item I have on the
22 agenda is Mr. LePome's motion on to obtain information, and
23 I noticed a withdrawal of that motion was filed on
24 August 15th, so that should no longer be on calendar.

25 THE COURT: Okay. And just as a side note -- and

1 this has really not so much to do with this case, but just
2 the problems that we have with notices of withdrawal, in
3 general.

4 (Colloquy not on the record.)

5 THE COURT: Among the judges, we were sort of
6 talking yesterday of what do we do when motions are
7 withdrawn, A, on a calendar matter and, B, should they just
8 be taken off.

9 And we basically decided that we're not going to
10 actually withdraw motions from calendars in any case, not
11 just this case, unless somebody files a motion to withdraw
12 before the answer, responsive pleading, is filed or they
13 state in there they have the consent of the opposing party.

14 Again, this is not so much to do with this case. It
15 happens, oftentimes, for example, on a routine motion for
16 lift stay.

17 Somebody files a motion for relief from stay. Somebody
18 files an opposition. 24 hours before, they withdraw it.
19 This is after the debtor has spent all this time and money
20 saying you were absolutely wrong, and they agree they're
21 wrong.

22 So this is just sort of just to let you know if anybody
23 wants to take off a motion in the future, and I do
24 appreciate the fact that you let us know, so we don't
25 prepare.

1 But as far as withdrawing motions -- and this is going
2 to apply to all cases -- if you just file some -- it's sort
3 of a 7041 issue.

4 In other words, under 7041, one can't just dismiss a
5 complaint after an answer's been filed without the consent,
6 so it will stay on calendar.

7 MR. SCHWARTZER: It sounds --

8 THE COURT: If --

9 MR. SCHWARTZER: It sounds --

10 THE COURT: If you don't mind it being on
11 calendar, that's not a problem.

12 MR. SCHWARTZER: It sounds like a new local rule,
13 your Honor --

14 THE COURT: It is, a new --

15 MR. SCHWARTZER: -- or --

16 THE COURT: -- secret --

17 MR. SCHWARTZER: -- or --

18 THE COURT: -- local rule.

19 MR. SCHWARTZER: Oh, it's a secret local rule
20 which we will not allow the out-of-state counsel to know
21 about, your Honor.

22 THE COURT: That's right. It's a secret local --

23 MR. SCHWARTZER: So I'm sure --

24 THE COURT: But it will still --

25 MR. SCHWARTZER: -- they will forget it in --

1 THE COURT: It's not a problem --

2 MR. SCHWARTZER: -- (indiscernible).

3 THE COURT: -- because it will just stay on
4 calendar, but that will explain why it's on calendar, and,
5 again, we'll be issuing an administrative order, but I
6 appreciate the fact that it's withdrawn. It's noted it will
7 be withdrawn. I assume you've consented.

8 MR. SCHWARTZER: That leaves two things on
9 calendar for this Court. One is a report with regard to the
10 motion to distribute funds.

11 If the Court recalls, there was an issue with regard to
12 I think approximately \$9,000,000 in funds that were in the
13 account on the date of the filing of the petition.

14 And there was a question of whether those funds should
15 be included in the distribution to the direct lenders.
16 Ms. Jarvis will report on that.

17 And then the final thing which is still contested,
18 your Honor, is the motion for relief from stay filed by
19 Rolland Weddell and the Spectrum Financial Group to continue
20 litigation in the United States District Court.

21 THE COURT: Okay.

22 MR. BRUMBY: Your Honor, may I approach?

23 THE COURT: Yes. Although, I have no problem with
24 that, but, perhaps, we should wait 'til you've had a chance
25 to talk to Mr. Garman, so that we're not --

1 MR. BRUMBY: Yes, ma'am.

2 THE COURT: -- saying things that he gets up and
3 says, wait a minute, I don't agree, and we start a fight we
4 don't need to start.

5 MR. BRUMBY: Well, that's the sole purpose for why
6 we're continuing this is to try to avoid a fight we don't
7 need to have.

8 THE COURT: Okay. Great. So what we'll do is
9 after I hear the Spectrum -- oh, well, no. Mr. Garman needs
10 to stay here, doesn't he --

11 MR. BRUMBY: Okay.

12 THE COURT: -- because he wants to hear the
13 Spectrum matter. I was going to say I could suggest that
14 you recess now. We'll just take a recess later, so you can
15 work it out --

16 MR. BRUMBY: Thank you, ma'am.

17 THE COURT: -- whatever's easiest. Okay.

18 Ms. Jarvis, on the motion to distribute.

19 MS. JARVIS: As you recall, your Honor, the
20 amount, approximate amount, we had asked to be able to
21 distribute was 68.1 million dollars.

22 But of that amount, there was \$9,000,000 that had been
23 collected prepetition that the Diversified and Unsecured
24 Creditors Committee asked for further time to review and go
25 over carefully to make sure that there was no dispute with

1 respect to how that was accounted for.

2 There have been numerous discussions in the interim.
3 And with respect to that approximately \$9,000,000, there is
4 an agreement on \$6,000,000 of that that it should be
5 distributed as originally requested by the debtors.

6 The other \$3,000,000 is still under discussion. It's
7 not that it may not be agreed to. It's simply that the
8 accounting issues are a little more complex, and it will
9 take us a little bit more time to walk them through it.

10 So what we are asking in order to not delay the initial
11 distribution any further is we will ask for the distribution
12 to be made of the approximately \$65,000,000 reserving the
13 \$3,000,000 that we're still in discussions with the
14 committees over until the next subsequent distribution which
15 is to be heard on August 31st.

16 THE COURT: Okay. Good. While I have you, is
17 there any updates concerning status of performing loans,
18 nonperforming, taking actions against nonperforming loans,
19 collection of funds --

20 MS. JARVIS: Well --

21 THE COURT: -- anything we need to add to the
22 status?

23 MS. JARVIS: No. We have continued. We have
24 continued collection efforts. I think as I mentioned we
25 were in the process of sending out default letters the last

1 time we were here in court.

2 Those have been sent out as well as the new statements
3 to borrowers that were created from the recreation of the
4 record, so we are moving forward on that as well as on
5 pursuing, you know, loans that are currently in default.

6 I also should report maybe briefly on the status of
7 plan negotiations. We did reach agreement with the four
8 committees to continue the exclusivity period until
9 August 31st.

10 That was in order to be able to try to work together to
11 hopefully have, you know, some consensus on a plan moving
12 forward.

13 We are continuing to have meetings with them. We have
14 meetings scheduled for today and tomorrow and are working
15 towards trying to quickly reach some resolution on a pathway
16 for it.

17 (Colloquy not on the record.)

18 MS. JARVIS: We again reiterate that, you know, we
19 feel it's very important. The debtors feel it's very
20 important that we move this plan forward to a conclusion
21 quickly because the estate simply cannot bear these
22 administrative expenses, and there are business reasons for
23 the need to move that forward quickly as well.

24 THE COURT: Okay. And I believe you anticipated
25 sending the first checks out based upon my last distribution

1 this week; is that correct?

2 MS. JARVIS: Well, the one issue we have is we've
3 been going back and forth on the form of the order. I think
4 we've got now an agreed form of order. I think we're in the
5 process of sending out kind of the final version today on
6 that.

7 We also were waiting to figure out the amount that we
8 had to put in based on this \$9,000,000 dispute, so my
9 anticipation is that we would lodge that order with the
10 court hopefully as early as tomorrow.

11 The problem we've got then is whether we need to wait
12 for the ten-day period, you know, before we send out the
13 checks or not.

14 It will take us a little bit of time to send them out,
15 but it will be done as promptly as possible, but it may not
16 be until 11 days after the order is entered both for
17 practical reasons and for just --

18 THE COURT: Well, I guess what you could do --

19 MS. JARVIS: -- safety reasons.

20 THE COURT: -- is start cutting the checks.

21 MS. JARVIS: Yes.

22 THE COURT: And then --

23 MS. JARVIS: Yes. And then we will proceed
24 forward to get everything ready to go, so that on that 11th
25 day we're ready to send everything out.

1 THE COURT: And let me suggest to speed up these
2 orders -- and, please, when you do the order, don't call me
3 up after you guys have waited a week and tell me I have to
4 sign it right away. That doesn't help matters.

5 One thing to make a fact -- it's one thing when you're
6 negotiating back and forth, but, you know, the procedure
7 allows that you can certify --

8 MS. JARVIS: Um-h'm.

9 THE COURT: -- that the following parties have
10 agreed, so you don't have to send around the actual copy.
11 All you need to do is, for example, E-mail the order.

12 The person E-mails back I agree, then you certify in
13 the order the following parties have agreed. I mean, I
14 think that will save you some time.

15 MS. JARVIS: Okay. We will --

16 THE COURT: And that's part of the local rule as
17 part of the procedure you can use. It is very important
18 that we know that everybody -- that is everybody meaning the
19 committee -- does agree, so that we can rely on that's the
20 order that was entered or that the parties have agreed to,
21 and that, indeed, was the true reflection of the hearing,
22 rather than my taking the transcript and going back through
23 it.

24 And, of course, if there's a dispute, then I'll go back
25 through the transcript and review it and enter the

1 appropriate order.

2 MS. JARVIS: And what we've been trying to do is
3 short-circuit that last end to try to resolve the disputes
4 up-front --

5 THE COURT: Exactly.

6 MS. JARVIS: -- so that before we submit it the
7 Court can know that this is an order that's been --

8 THE COURT: Exactly.

9 MS. JARVIS: -- negotiated and agreed to --

10 THE COURT: So please --

11 MS. JARVIS: -- on by the parties.

12 THE COURT: -- upload that tomorrow. Let me --
13 it's kind of --

14 MS. JARVIS: Okay.

15 THE COURT: I think it's important that you get
16 that uploaded tomorrow.

17 MS. JARVIS: I agree.

18 MS. CARLYON: Your Honor, as this is an interim
19 distribution, and the bulk of it was approved at the last
20 hearing, we would certainly favor a waiver of the ten-day
21 period with respect to the distribution, so that these
22 investors can get their money sooner than later. It is a
23 fairly-dire circumstance for many of them.

24 THE COURT: If I have the ability to waive the
25 period, I would. Let's see. I'm not even sure there would

1 be. It's an interim distribution and interlocutory.

2 (Colloquy not on the record.)

3 MS. JARVIS: And, your Honor, the debtor is
4 obviously in favor of getting this distribution sent out as
5 soon as possible.

6 (Colloquy not on the record.)

7 THE COURT: It seems to me it would certainly be
8 interlocutory.

9 MS. JARVIS: Yeah.

10 THE COURT: I don't think there would be a stay.
11 If everybody's -- well, you may have people appealing I
12 guess, but it's an interlocutory order, so it would be up to
13 them to -- I don't have anything before me.

14 I mean, all I could do is offer my, quote, "advisory
15 opinion" which isn't worth anything. If you want to file a
16 motion to ask me to waive it, if I have the power to waive
17 it, I could do it, but that's going to take time, too, so
18 I'll just --

19 MS. JARVIS: Well --

20 THE COURT: -- leave it to your best discretion.

21 MS. JARVIS: Yeah. We'll work towards a procedure
22 that will get these out as soon as possible, your Honor.

23 THE COURT: Well, maybe if the parties that
24 objected would just agree that there is no stay or that
25 they'd waive their right to a stay as to this distribution,

1 that would solve that problem as well because that's a
2 limited parameter of people that objected, so --

3 MS. JARVIS: Well, we'll work on that, your Honor.

4 THE COURT: Okay. Good. Thank you.

5 MS. CHUBB: Can we do that on the record? Can we
6 waive that on the record?

7 THE COURT RECORDER: I'm sorry, Counsel.

8 THE COURT: Sure. Ms. Chubb, do you want to come
9 forward? We can't hear. You've got to be at a microphone
10 because of the transcription.

11 MS. CHUBB: I was just suggesting that we could
12 waive that on the record, and then they could go forward,
13 and maybe that will save a few days and some grief --

14 THE COURT: Okay.

15 MS. CHUBB: -- on the part of some people. My
16 group will certainly waive that.

17 THE COURT: All right.

18 MR. CHARLES: Rob Charles for the Unsecured
19 Creditors Committee. So will the committee.

20 THE COURT: Okay.

21 MR. GARMAN: Greg Garman. We supported more
22 money, so we would waive.

23 THE COURT: All right.

24 MS. CARLYON: The First Trust Deed Committee,
25 also. This is Candace Carlyon.

1 MS. LORADITCH: Anne Loraditch for Diversified
2 Committee also waives.

3 THE COURT: Okay. So I guess that leaves the only
4 parties Mr. LePome and Mr. Mincin, and they're not --

5 THE CLERK: Mr. LePome had a matter before
6 Judge Markell --

7 THE COURT: Oh, okay.

8 THE CLERK: -- (indiscernible).

9 THE COURT: So maybe you can ask him, and he can
10 come over here, then.

11 And so I think Mr. Mincin was the only other opposing
12 party I believe. You can check your list.

13 MS. JARVIS: We'll check our list, and we'll try
14 to get everyone to agree, and I think, your Honor, if
15 everyone would agree we could probably get these checks out
16 as possibly as soon as Friday, certainly by early next week.

17 THE COURT: Okay. All right. Good. All right.
18 Okay.

19 Now, on the motion for relief from stay on Spectrum.

20 MS. CADISH: Good morning, your Honor.

21 Elissa Cadish on behalf of Rolland Weddell and Spectrum
22 Financial Group.

23 This is our motion for relief from the stay to continue
24 on with the litigation that's pending in the United States
25 District Court before Judge Dawson where, in fact, that case

1 has been pending for five years now.

2 And just when we were about to get into the homestretch
3 of discovery and bring this case to a conclusion is when
4 this bankruptcy was filed.

5 As we indicated in our motion, there are not only
6 claims that my clients have against USA Commercial Mortgage
7 Company.

8 We also have claims against several other defendants,
9 some companies that were related to the USA Commercial
10 Mortgage Company and the individuals who were the principals
11 of that company.

12 It seems to make sense not only from our perspective,
13 but, also, from the bankruptcy perspective to resolve all of
14 the claims together and have all of the parties addressed
15 together, rather than having to try one case there against
16 Mr. Hantges and Mr. Milanowski which will inevitably involve
17 at least discovery related to USA and then have to
18 separately proceed in this court with USA directly. It
19 makes sense to do all of that together.

20 And, in fact, my clients' predecessors were the PCI
21 entities. They had previously been in a bankruptcy. And
22 during the course of that bankruptcy which was before then
23 Bankruptcy Judge Jones, USA had actually objected to having
24 this litigation proceed in the bankruptcy court, so it went
25 forward in the district court.

1 It's pending there before Judge Dawson who is very
2 familiar with the facts of this case as complicated --

3 THE COURT: Well --

4 MS. CADISH: -- as they may be.

5 THE COURT: But what relevance does that have once
6 you get to a trial? Once you get to a trial, everything
7 starts over, so what relevance does it have that somebody
8 would be familiar, allegedly familiar, with the facts of the
9 case?

10 MS. CADISH: Well, your Honor, it is a complex
11 series of fact. And so to try a case before a judge who is
12 already up to speed on them, it certainly saves judicial
13 time and effort to have a judge who --

14 THE COURT: Well, I think that's often a misnomer
15 that attorneys have in the sense that our job is to take the
16 facts that are presented at trial.

17 And once you start to presume that we, quote, "know
18 some facts" from a summary-judgment motion we've heard along
19 with 300 other cases that we have, it kind of does two
20 things.

21 It presumes too much of the judge and takes away the
22 fact the judge has got to rule on the facts that are
23 presented at trial and only those facts that are presented
24 at trial.

25 MS. CADISH: I understand, your Honor. I guess,

1 you know, just like the fourth lawyer, I mean, I would think
2 that for a judge who has considered numerous substantive
3 motions on the case I would think it would be of some help
4 in preparing for the trial, but your point is well-taken.
5 Obviously, during the trial, you have to weigh the evidence
6 presented at the trial.

7 USA Commercial Mortgage Company has asserted
8 counterclaims in that litigation based on loans to the PCI
9 entities and the guarantees of those loans made by
10 Mr. Weddell and Spectrum Financial Group.

11 Now, in the opposition filed by USA Commercial Mortgage
12 here, the debtor, they say they want to focus on their goal
13 of maximizing the recovery on loans. It would seem that
14 pursuing and going forward with those counterclaims would
15 serve that purpose --

16 THE COURT: Well, PCI --

17 MS. CADISH: -- rather than --

18 THE COURT: -- is a --

19 MS. CADISH: -- countervailing it.

20 THE COURT: -- bankrupt entity, right?

21 MS. CADISH: PCI is, and Spectrum Financial
22 Group -- Spectrum Financial Group acquired and paid for in
23 that bankruptcy the claims that the PCI debtors had against
24 USA Commercial Mortgage.

25 THE COURT: Okay. So the counterclaims that the

1 debtor now has are valueless, this debtor has are now
2 valueless.

3 MS. CADISH: No.

4 THE COURT: The counterclaims this debtor has --

5 MS. CADISH: Not to the -- well, I think the --

6 THE COURT: Assuming --

7 MS. CADISH: -- the claims --

8 THE COURT: -- they win, yeah. I --

9 MS. CADISH: The claims --

10 THE COURT: I apologize.

11 MS. CADISH: -- based on the guarantees, not -- I
12 mean, I understand, your Honor. What --

13 THE COURT: Assuming they had won on the money.
14 As far as collecting money, that's what I meant to say.

15 MS. CADISH: No. Because my clients aren't the
16 PCI bankrupt entities. My clients are Rolland Weddell and
17 Spectrum Financial Group. They were guarantors of the loans
18 even if the actual underlying borrowers are gone --

19 THE COURT: Okay.

20 MS. CADISH: -- and no longer.

21 THE COURT: So it's only the guarantee that's any
22 good.

23 MS. CADISH: Yes, your Honor.

24 THE COURT: Well, how hard --

25 MS. CADISH: Both Mr. --

1 THE COURT: -- is it to sue on a guarantee? I
2 mean, you just sue on a guarantee. You don't have to go
3 through all the facts of -- you know, under Nevada law, a
4 guarantee is you sign the guarantee, and there aren't many
5 defenses.

6 MS. CADISH: Well, your Honor, I would agree, and
7 I guess I'm a little confused about why the debtor seems
8 unable to state whether, in fact, they have those claims or
9 don't have those claims.

10 THE COURT: But why should the debtor want to
11 go -- how many weeks of trial do you think it's going to
12 take?

13 MS. CADISH: Trial could easily take three weeks,
14 four weeks.

15 THE COURT: Three weeks at \$100,000 a day?

16 MS. CADISH: Yes. Well, considering there's
17 already about \$500,000 a week being incurred.

18 THE COURT: So --

19 MS. CADISH: Yes. But, your Honor --

20 THE COURT: So why should the estate have to sit
21 through this when all you have to do is file your proof of
22 claim?

23 MS. CADISH: We have to file the proof of claim
24 here to pursue the claim against USA --

25 THE COURT: Sure.

1 MS. CADISH: -- and pursue --

2 THE COURT: You file --

3 MS. CADISH: -- a separate trial --

4 THE COURT: -- your proof of claim.

5 MS. CADISH: -- before Judge Dawson against

6 Mr. Hantges and Mr. Milanowski and --

7 THE COURT: So why is that --

8 MS. CADISH: -- Blamo (phonetic) and --

9 THE COURT: -- so hard, though?

10 MS. CADISH: What's that?

11 THE COURT: Why is that so hard? You file your
12 proof of claim here. It's kind of unlike -- I mean, they
13 may file an objection to proof of claim, but the point is
14 there may not be any assets, anyway.

15 MS. CADISH: Well, your Honor, I guess what we
16 wanted to do and what we were hoping to accomplish is to
17 resolve all of it together, rather than having to go through
18 two separate proofs because -- and if I'm mistaken, that's
19 fine, but I was expecting an objection to the proof of
20 claim, and so I was expecting to have to go through it.

21 And if I'm mistaken about that -- and I know that the
22 deadline for the proofs of claim has been vacated for now,
23 and so maybe it will get to a point that that won't be the
24 case.

25 But we certainly were concerned about having to

1 litigate in two different places and the lack of efficiency
2 of such a process --

3 THE COURT: Sure.

4 MS. CADISH: -- particularly given as you've
5 pointed out the expense and length of a trial like that and
6 the discovery that will be involved.

7 THE COURT: Well, isn't the claims against the
8 individuals are what makes this case complicated?

9 MS. CADISH: It's really it's the under -- it's
10 the background facts that are complicated. It's not that
11 the claims themselves are, I mean, you know, claims for
12 fraud and claims for RICO.

13 USA is involved I believe in the RICO conspiracy claim;
14 otherwise, it wouldn't be under the 1962(c) claims where you
15 sue the person operating the entity through a pattern of
16 racketeering.

17 But, you know, obviously, we're seeking to move forward
18 to liquidate the claim over there and to have it all move
19 forward together and get a resolution, and, you know, I
20 guess -- and I'll just say one more time.

21 And, your Honor, I understand, you know, the points
22 that you're raising today, but I really don't understand why
23 the debtor seems unable to state at this point whether
24 they're even the proper party to assert the counterclaims
25 that are pending in the U.S. District Court.

1 It's certainly involved in pursuing recovery on the
2 other loans in the course of this bankruptcy proceeding, and
3 I have talked to counsel for the debtors going back a couple
4 of months now about the pending litigation.

5 And so if, in fact, that those counterclaims that USA
6 has asserted don't belong to USA, that's certainly something
7 we want to know and need to be able to act upon.

8 THE COURT: Okay. Thank you.

9 MS. CADISH: Thank you.

10 THE COURT: Opposition.

11 MR. SCHWARTZER: I think the key here is sort of
12 obvious. We have a debtor who has filed its Chapter 11
13 about four months ago. We have an extension of exclusivity
14 until August 31st.

15 We're working on putting together a plan. It may get
16 done by August 31st. It may be that we'll have enough
17 progress that all the parties will agree that exclusivity
18 should be extended, but, clearly, the focus of this case
19 should be on working on the reorganization of the debtor.

20 And the idea of having the debtor, the current
21 management of the debtor, having to probably employ another
22 set of counsel for litigation purposes, spend very large
23 sums of money on preparing for a trial when we don't even
24 know if there will be a distribution to unsecured creditors
25 becomes a major, major problem.

1 And I guess it basically goes down to why the automatic
2 stay is in place. It's to give the breathing room to a
3 debtor to see if it could reorganize.

4 We're in I think it's fair to stay a critical stage of
5 working on reorganization. And at this point in time, the
6 debtor does not want to be diverted from focussing on
7 reorganization to focussing on very major substantial
8 litigation that's involved here.

9 In addition, when the movants talk about the economics
10 of it, it's clear that the only economics they're worried
11 about which is their prerogative is their economics.

12 It doesn't help the debtor at all to be involved in
13 this litigation in the U.S. District Court. It's clearly
14 going to be more economical for the debtor to deal with this
15 issue as a claims issue.

16 And if Spectrum and Weddell don't file a proof of
17 claim, they have no claim in this bankruptcy case. We may
18 have to then look at the guarantees and go forward and sue
19 on the guarantees outside of the bankruptcy court or have a
20 question about the proper jurisdiction on the guarantees,
21 but there is a real issue here.

22 USA Commercial Mortgage is the servicer on the loans.
23 The actual lenders were direct lenders. As we stand here
24 right now, we don't know who wound up owning this loan and
25 who has the right to go forward because the PCA Properties

1 (phonetic) as I understood it got foreclosed on during the
2 PCI bankruptcy a couple of years ago.

3 So there's no loans there. It's only on the
4 guarantees, and we'd have to see what came out of those
5 properties and was paid to direct lenders. We don't know if
6 the direct lenders still have an interest in the guarantees,
7 things like that.

8 And I'm sure the Direct Lenders Committee will want to
9 say, well, if you collect money on the guarantees it goes to
10 the direct lenders. It's not property of the bankruptcy
11 estate. That issue has to be determined.

12 We haven't even focussed on that issue. It's something
13 that may be part of a plan of reorganization to determine
14 who has a right to go after these guarantees where there
15 were loans by direct lenders.

16 So at this point in time, we would really be struggling
17 with bankruptcy issues to determine who should be handling
18 this litigation.

19 If it is litigation that's only going to benefit direct
20 lenders, there may be a real question of whether the
21 debtor's estate should even be involved in going forward on
22 the counterclaims.

23 If the estate is not going to be involved in the
24 counterclaims, benefit from the counterclaims, it's very
25 clear, then we really should just leave this as a claims

1 process to see if there's any money for distribution to
2 unsecured creditors.

3 Also, I think the Court should consider the factor that
4 what this lawsuit is about. You read through the complaint,
5 and what they're saying is USA Commercial tricked these
6 people into borrowing too much money.

7 And then when they were in trouble Tom Hantges and
8 Joe Milanowski walked in the door and took over in what
9 appears to be an effort to protect the direct lenders who
10 had made the loans on the properties involved in the PCI
11 bankruptcy.

12 The counterclaims are fairly clear and easy. Spectrum
13 borrowed some of the money and signed notes.
14 Rolland Weddell gave his personal guarantee on the notes.
15 But as I said, I'm not sure who's supposed to get the money
16 collected from them if there is money still owed.

17 We are going to be -- the debtor is going to be
18 prejudiced if we go forward by the fact that we're going to
19 have to spend time and effort now litigating.

20 We think that it is clear to us that it would be more
21 economical to allow the claim to be handled as a claims
22 process because, number one, there's no jury, so that
23 shortens the time for any trial if there is an objection to
24 the claim.

25 The fact that previously in the PCI bankruptcy USA

1 Commercial Mortgage didn't want a bankruptcy judge to make
2 the determination really isn't a factor here.

3 In this case, USA Commercial is the debtor and would
4 prefer the claims process to be handled in the bankruptcy
5 court because of the economics and also because of the
6 timing.

7 We don't have to file an objection to their claim until
8 we see if there's going to be a distribution to unsecured
9 creditors, and there's some reason to spend the time and
10 effort on the objection to claim.

11 We would also ask, your Honor, to note -- and I think
12 you already noted -- that the fact that Judge Dawson is
13 familiar with the case is pretty irrelevant to the fact
14 because they're asking for a jury trial in U.S. District
15 Court, so the jury is the one who's going to have to hear
16 all the facts, and, obviously, they're not familiar with any
17 of the facts.

18 And then, of course, you know, as I said as this case
19 has been admitted, this case is not ready for trial. It's
20 not like we're on the eve of trial in the U.S. District
21 Court. Clearly, this bankruptcy wasn't filed just to stay
22 this litigation.

23 There's discovery that has to be done by all the
24 parties. We don't want to spend the time doing it. We
25 don't know if prior counsel who was handling it as to USA

1 Commercial which I think was the Santoro, Driggs firm would
2 be available to be counsel at this time.

3 We may have to as I said make a whole new set of
4 counsel. We may have to have counsel learn everything from
5 the base up to start this, and it just would be an expensive
6 proposition.

7 So it doesn't appear to be this is the kind of case and
8 certainly not the time in this case to lift the automatic
9 stay to let the litigation go forward.

10 Thank you.

11 THE COURT: Okay. Any other opposition?

12 Hold on. I want to get the other --

13 MS. CADISH: Okay.

14 THE COURT: -- see if there's any opposition
15 first.

16 MS. CADISH: I apologize --

17 THE COURT: You're not --

18 MS. CADISH: -- your Honor.

19 THE COURT: There's a cast of thousands in this
20 case, so, yeah, I know you're used to just -- well, that's
21 right. We have multiple parties. You're used to casts of
22 thousands.

23 MS. CADISH: I am. Thank you.

24 MR. CHARLES: Your Honor, the committee, the
25 Unsecured Creditors Committee, filed a joinder really just

1 to accentuate one point Mr. Jarvis (sic) made which is we
2 are sensitive to the expense. And on the other side of that
3 is it's sensitive to the limited sources of funds to pay
4 expense.

5 If you kind of step back and look at the big picture,
6 the implication of how you're going to be paying
7 professional fees at this point is looking at least as to
8 professionals employed through the USA Commercial estate
9 looking at its limited liquidity.

10 When you look at the reports that are provided by
11 Mesirow, there is very limited liquidity now. The funds
12 that are being held back from direct lenders (indiscernible)
13 prepaid interest when that is determined to be unencumbered
14 funds is going to be the most likely source of payment for
15 professionals.

16 And even that at the rate that funds are being
17 collected and expended is a very finite resource, and that's
18 also one of the two principal sources of repayment for
19 unsecured creditors at all.

20 So our committee, universally, is terrified about the
21 ongoing expense, and adding another black hole of district
22 court litigation without understanding what the benefit is
23 for the estate literally terrified our committee, and we
24 opposed the motion for stay relief.

25 THE COURT: Okay.

1 MR. GARMAN: Your Honor, I want to address one
2 very small point in their reply. I join in Mr. --

3 THE COURT: You probably need to move the
4 microphone up.

5 MR. GARMAN: I join --

6 THE COURT: There you go.

7 MR. GARMAN: I join in Mr. Schwartz and
8 Mr. Charles' arguments. But in the reply, the last couple
9 of paragraphs indicate that USA should be required to
10 identify who owns these claims. That's a complicated
11 process.

12 And, clearly, I just want to make sure that direct
13 lenders' rights aren't implicated, and there's no final
14 determination here that may affect direct lenders on a
15 going-forward basis.

16 THE COURT: Okay. All right. Now, a reply. Now
17 we can put --

18 MS. CADISH: We --

19 THE COURT: And, you know, this one's
20 counterintuitive. The up is down, and the down is up.

21 MS. CADISH: Thank you. I think you understand
22 the issues, so I'm not going to spend a whole lot more time
23 up here.

24 I guess what I would say is -- and this seems obvious,
25 certainly, to your Honor. But up 'til now, the entire

1 district court case has been stayed, in other words, not
2 just as to USA.

3 But Judge Dawson has stayed the entire case basically
4 waiting to see what was going to happen over here because it
5 was his goal I think to try to keep the case together.

6 And so what I would ask, your Honor, is just that it be
7 clear today, and I think that it should be that to the
8 extent this motion may be denied today that there's
9 certainly no reason arising out of this bankruptcy court why
10 that case couldn't continue as to all the other --

11 THE COURT: Okay.

12 MS. CADISH: -- defendants.

13 Thank you.

14 THE COURT: Thank you.

15 THE CLERK: Judge, we understand that the call
16 dropped off, so what do we (indiscernible)?

17 THE COURT: Oh, okay. Well, this is a good chance
18 for you to take your five minutes and talk about the other
19 matter I guess?

20 UNIDENTIFIED SPEAKER: Okay.

21 THE COURT: Okay.

22 THE CLERK: All rise.

23 THE COURT: I did have a question before you go.
24 You may have to ask someone. The question I had is to what
25 extent, if at all, is USA Commercial providing insurance

1 that's impacted by defending the former insiders and does
2 the debtor care in that regard.

3 In other words, clearly, there's no stay against the
4 insiders unless somehow the insurance might be implicated.
5 That wasn't raised in your opposition, but I just want to --
6 so we're not back on that issue.

7 (Colloquy not on the record.)

8 MS. CARLYON: Thank you, your Honor.

9 (Recess at 10:21:10 a.m.)

10 (Court reconvened at 10:39:05 a.m.)

11 THE CLERK: Bankruptcy court is now in session.

12 (Colloquy not on the record.)

13 THE COURT: Be seated.

14 (Colloquy not on the record.)

15 THE COURT: Okay. Let me finish -- oh, on the
16 issue of the insurance. Well, let me finish this up first,
17 Mr. LePome, unless you wanted to leave.

18 (Colloquy not on the record.)

19 THE COURT: I just want to finish this one motion,
20 and then we'll put your comment on --

21 MR. LePOME: Okay.

22 THE COURT: -- about the other issue, and I
23 understand you were in court next-door, so that's not a
24 problem.

25 MR. SCHWARTZER: The answer to your question is

1 there is no insurance. We wish there was.

2 THE COURT: Okay.

3 MR. SCHWARTZER: But that's one of the main
4 reasons for not lifting the stay because it will be the cost
5 of the defense as well as prosecution of counterclaims will
6 be an out-of-pocket expense for the bankruptcy estate.

7 THE COURT: Okay. All right. Well, I'm going to
8 deny the motion for relief from stay. You know, going back
9 to the whole kind of basic points of bankruptcy is one of
10 the quintessential elements of bankruptcy is the fresh start
11 and the breathing space required in order to get the fresh
12 start.

13 And then, also, it is a very important process that
14 instead of having the debtor have to defend itself in
15 numerous jurisdictions and numerous places that's why we
16 have the whole claims process.

17 The claims process is very valuable because, first of
18 all, it's one forum to decide what the claims are.
19 Secondly, it becomes a very pragmatic forum because in this
20 manner a creditor can file its claim, and the debtor may or
21 may not object to the claim based upon practical
22 considerations such as whether or not it's cost-efficient to
23 object to the proof of claim.

24 In some cases, for example, in Chapter 7's, for
25 example, of even corporations, proofs of claims are filed,

1 and then there's no objections made because the reality is
2 the assets aren't sufficient to go down the chain, so it
3 would be useless to spend the money to litigate it. In this
4 case, we don't know what is going to happen, yet, with the
5 unsecured-claim issue.

6 Now, in usually most cases, this is a benefit to
7 creditors as well because they now have an end in sight, and
8 they know there's a place to litigate their claims, and
9 they're not wasting their money prosecuting a claim for
10 which there's no recovery in the end.

11 But, conversely, third parties are not covered by the
12 stay. Parties who are not the debtor are not covered by the
13 stay or this case is a little easier in the sense that we're
14 not talking about whether or not property of the estate's
15 involved, et cetera, because we're not in this particular
16 issue here, so prosecution against the former insiders is
17 not barred.

18 And in any case just to make it clear, to the extent
19 there is a stay, I'll lift the stay against all of the other
20 remaining defendants.

21 And let me kind of be clear on that, so we're not -- is
22 that a correct statement that all of the other defendants --
23 I don't have it handy.

24 Mr. Schwartzer --

25 MR. SCHWARTZER: I just want to look --

1 THE COURT: -- from your standpoint?

2 MR. SCHWARTZER: -- at the complaint and make sure
3 on the complaint. The complaint names --

4 (Colloquy not on the record.)

5 THE COURT: There it is.

6 MR. SCHWARTZER: The only --

7 MS. CARLYON: They're the nondebtor defendants.

8 MR. SCHWARTZER: Yeah. All the other defendants
9 other than USA Commercial Mortgage are --

10 THE COURT: All right. Fine.

11 MR. SCHWARTZER: -- nondebtors.

12 THE COURT: Okay.

13 MR. SCHWARTZER: They may be affiliates or
14 related, but they're nondebtors.

15 THE COURT: All right. Fine.

16 MS. JARVIS: That's correct.

17 THE COURT: So the stay is lifted as to all of
18 those defendants. Again, we have not yet set a
19 proof-of-claim bar date.

20 But, again, those are the kind of things that are
21 better adjudicated as to the debtor in this proceeding, so,
22 therefore, I'll deny the motion for lift of stay as to this
23 debtor.

24 Now, Mr. LePome, on the --

25 MR. LePOME: Your Honor, I thank you for the

1 accommodation. I'm counsel for the debtor on Greystone
2 Holdings which is right next-door.

3 I waive the -- on behalf of all of my clients,
4 Dr. Stanley and others -- and they've been identified in
5 various pleadings -- waive the ten-day rule, so that we can
6 get a distribution with the safeguards previously made of
7 record.

8 THE COURT: All right. Thank you very much.

9 MR. LePOME: Thank you.

10 THE COURT: Okay. Now, on the Standard
11 Properties, have we resolved their issues there or what
12 issues are remaining on that?

13 MR. SCHWARTZER: My understanding of the only
14 remaining issue was the Direct Lenders Committee wants the
15 right to bring litigation in this court to enjoin the
16 Florida litigation if the debtor doesn't bring that
17 complaint and motion for a preliminary injunction.

18 We said we'd discuss it with them. I could tell you
19 that our intention is, number one, to try and find a way to
20 negotiate, so there's no litigation.

21 But, number two, if that's not successful, it's the
22 intent of the debtor to file that complaint and that motion
23 for a preliminary injunction and set it for a hearing on
24 September 28th to enjoin the Florida litigation on behalf of
25 USA Commercial and on behalf of the direct lenders it

1 represents under the various loan-servicing --

2 THE COURT: Well, can you --

3 MR. SCHWARTZER: -- agreements.

4 THE COURT: -- do this? Can you let Mr. Garman
5 know by September 1st what your intentions are, and then if
6 their intention is is at that stage not to you can bring
7 your motion to file that lawsuit which could be heard on
8 that --

9 MR. SCHWARTZER: On September --

10 THE COURT: -- September date as well, and I'd
11 give you an order shortening time.

12 MR. GARMAN: Okay.

13 THE COURT: Does that work?

14 MR. GARMAN: That works from our perspective,
15 your Honor, yeah.

16 MR. SCHWARTZER: That will be fine.

17 THE COURT: Mr. -- I'm sorry.

18 MR. BRUMBY: Mr. Brumby.

19 THE COURT: Brumby. Sorry.

20 MR. BRUMBY: Yes, ma'am. That's acceptable to me.
21 I've told Mr. Garman that whatever their resolution was I
22 wasn't going to consent that they had standing, but I didn't
23 object. I'd just like the opportunity to be heard on the
24 matter --

25 THE COURT: Exactly.

1 MR. BRUMBY: -- if it arose. The only other
2 matter that I think was lingering, Mr. Garman -- the whole
3 purpose here, your Honor, is before we get off into the
4 world of litigation --

5 THE COURT: Exactly. Is make the project work.

6 MR. BRUMBY: -- to try to find a way to make the
7 project work and try to find a way to make everybody as I
8 say when I mediate things either equally unhappy or equally
9 happy and to provide a breathing time to do that.

10 Originally, the motion to lift stay was going to get
11 carried to September the 13th, but I know your Honor
12 probably would have preferred to hear them both together.

13 I wanted 25-days' notice at least of the injunction.
14 That's why I went to the 28th, and so I'm not going to
15 oppose the 28th.

16 I'm happy to report that Ms. Jarvis has told me she's
17 going to telephone me tomorrow with a date that my client's
18 representatives could meet with the debtor's representatives
19 next week in Chicago.

20 The only other lingering issue was the answer date with
21 respect to the direct lenders in the start of litigation.
22 I've already agreed with Ms. Jarvis' office to September the
23 15th.

24 I agreed this morning with Mr. Garman that I would
25 extend that because of the September 28th anticipated

1 hearing date if we can't find a resolution to October the
2 10th.

3 He has some concerns remaining that it may not be
4 enough time. I have told him that on September the 28th if
5 you are not inclined to grant the injunction, I mean, if
6 they want to ask you to kindly direct me to give them more
7 time I'll abide by whatever your wishes are.

8 THE COURT: Okay. All right.

9 MR. GARMAN: Yeah. I get to --

10 THE COURT: Fine.

11 MR. GARMAN: I get to come back and argue if
12 necessary. Just to clarify what we've agreed to further,
13 the deadline, the extended answer deadline, is to answer or
14 otherwise plead, correct?

15 MR. BRUMBY: Yes. Yes, it is.

16 MR. GARMAN: And the debtor has agreed to
17 cooperate with the Direct Lenders Committee in sending out a
18 communication and putting those folks that have been served
19 with these complaints in connection with one another, so
20 they can pick their own destiny to a certain extent.

21 THE COURT: Okay.

22 MR. GARMAN: So --

23 THE COURT: Now, since you mentioned mediation, we
24 have Judge Glover here in September and November.

25 (Colloquy not on the record.)

1 THE COURT: Don't we have him in November?

2 THE CLERK: Yes, Judge.

3 THE COURT: Okay.

4 (Colloquy not on the record.)

5 THE COURT: So to the extent there are any of
6 these kind of discrete adversaries or issues that you think
7 would be helpful, Judge Glover's a bankruptcy judge from the
8 Western District of Washington.

9 He acts as a mediator slash settlement judge. I guess
10 "mediator" is a better term because settlement judgment
11 implies a little more.

12 He acts as a mediator for us. He's been quite
13 successful about making everybody equally unhappy, and the
14 best part is he's free as opposed to having to pay a
15 mediator.

16 So if you wish to avail yourself of that, just let us
17 know sufficiently in advance, so that we can put you into
18 the process. Okay.

19 One other housekeeping matter is we have to set new --
20 we need to set October. Let's set October, November,
21 December dates.

22 Hopefully, we might not need to use them. But if we
23 don't set them, then my calendar fills. You need to make
24 transportation.

25 Oh, one other comment -- and especially since I missed

1 Ms. Loraditch and Ms. Carlyon before -- I do appreciate the
2 fact that your committees are staffing this appropriately
3 and having just one attorney on each side appear at these
4 kind of hearings, and I think it's very appropriate.

5 I know local counsel is an integral part of this
6 process, and I very much appreciate the fact that you're
7 here, and that we haven't incurred the expense of, you know,
8 out-of-state counsel, so I was just I guess half asleep when
9 I was listening to appearances. I apologize.

10 MS. CARLYON: Thank you, your Honor.

11 THE COURT: Okay. October, here's some ideas.
12 What do you think about October 19th in the morning? Does
13 that work? Our hearing in September is September 28th.

14 Arguably, I could give you -- well, and then the next
15 date would be October 30th. Now, arguably, I could give you
16 October 18th and switch my motion calendar over.

17 And with any luck, we'd have a new judge to hear my
18 Chapter 7's. But if the 19th is better, that's a little
19 easier for me. Does the 19th work?

20 MS. JARVIS: Yeah.

21 THE COURT: That's --

22 MS. JARVIS: That's fine.

23 THE COURT: That will be like a fairly-long time
24 between your hearings.

25 UNIDENTIFIED SPEAKER: That's all right.

1 THE COURT: But okay. And then October 30th,
2 then --

3 THE CLERK: At 9:30, Judge?

4 THE COURT: At 9:30 and keep the whole day clear
5 on the 30th.

6 THE CLERK: Pardon me?

7 THE COURT: Keep the whole day clear on the 30th.

8 THE CLERK: Okay.

9 THE COURT: The 19th, you will probably only have
10 the morning. If there are a lot of matters that must be
11 heard, I could get somebody else to do the Chapter 13
12 calendar, but I prefer to keep it in the morning. But if we
13 can't, we can make due.

14 How about November -- you could have November 13th,
15 14th for the next one? The 13th's a Monday. The 14th's a
16 Tuesday. Does anybody care?

17 (Colloquy not on the record.)

18 MR. SCHWARTZER: The 14th, your Honor.

19 THE COURT: The 14th?

20 MR. CHARLES: I care a little bit. I teach
21 Tuesdays and Thursdays at the Law School Reorganization. So
22 the days that I can't be here, Ms. Freeman will be. It's
23 easier for the committee if I am here. I'm cheaper.

24 THE COURT: Okay. So you would rather -- the
25 13th's better for you?

1 MR. CHARLES: Yes, ma'am.

2 (Colloquy not on the record.)

3 THE COURT: Okay. The 13th. Is that all right
4 with you all? We'll keep the whole day.

5 Then how do you feel about November 28th? That's the
6 Tuesday after Thanksgiving. Oh, that's a Tuesday. Is that
7 all right, though, Mr. -- oh, you're probably on vacation
8 over Thanksgiving, aren't you?

9 MR. CHARLES: We live to serve the Court.

10 THE COURT: Okay. I hate to do it the Monday
11 after Thanksgiving. People have plans, et cetera, so let's
12 do it that Tuesday.

13 THE COURT RECORDER: (Indiscernible).

14 THE COURT: Hopefully, you'll be out of here in
15 time to teach.

16 THE CLERK: Set aside the whole day, Judge?

17 THE COURT: Yeah.

18 Then how do you feel about December 15th?

19 (Colloquy not on the record.)

20 MR. SCHWARTZER: I think that's the AB -- oh,
21 that's the National Association of Bankruptcy Trustees
22 meeting --

23 THE COURT RECORDER: Counsel, would you move --

24 MR. SCHWARTZER: -- which I'm going --

25 THE COURT RECORDER: -- the microphone a little

1 bit closer, please?

2 MR. SCHWARTZER: That's the --

3 THE COURT RECORDER: Thank you.

4 MR. SCHWARTZER: December 15th is I -- no. That's
5 an available date.

6 THE COURT: Okay.

7 MR. SCHWARTZER: I'm sorry.

8 THE COURT: The 15th's all right, then? You know,
9 these far-out dates are enough that we could -- they're a
10 little flexible for the, you know, major attorneys.

11 Now, I don't think any of us want to be here the week
12 between Christmas and New Year's, so we won't set one there.
13 But, you know, if things -- I think every year I've had some
14 crisis the last week of December, so I am sure what's going
15 to happen is there will be some major crisis that last week,
16 so --

17 MR. SCHWARTZER: Well, your Honor, maybe you want
18 to set a date, but just say you really don't want to use it,
19 and we all can hear that.

20 THE COURT: Well, the only problem with that is
21 then people will fill it up, so let's not set it now, but
22 we'll revisit the issue in November, but let's give you a
23 January date, though, the first week in January.

24 THE CLERK: (Indiscernible).

25 THE COURT: And I don't have -- do you have an '07

1 calendar around here, Eileen?

2 THE CLERK: No, Judge. Let me pull one up for
3 you.

4 THE COURT: I've got my '05 calendar year here.
5 Oh, there's an '07.

6 THE CLERK: I have --

7 MR. SCHWARTZER: Oh.

8 THE CLERK: I have the '07. I have the '07
9 calendar here on (indiscernible).

10 THE COURT: So December. Can you make it show on
11 my screen?

12 THE CLERK: I'm going to make a copy for you.

13 THE COURT: So December 5th maybe or maybe closer
14 in the week like December --

15 THE CLERK: January?

16 THE COURT: January 2nd maybe? Is that too soon
17 after the new -- no. Everybody's shaking their head. Well,
18 I mean -- sorry. January 3rd, how does that work, the
19 middle of the week?

20 UNIDENTIFIED SPEAKER: That's better.

21 (Colloquy not on the record.)

22 THE COURT: Okay. So January 3rd.

23 THE CLERK: January 3rd all day?

24 THE COURT: Yeah.

25 MS. CARLYON: Your Honor, just as a housekeeping

1 matter, the administrative order setting response and reply
2 dates I think had an error in it based on the Court's
3 ruling.

4 I brought it to Mr. Schwartzer's attention. I'm hoping
5 we can clarify that when we do the order that contains these
6 dates.

7 THE COURT: Okay. Fine.

8 MS. CARLYON: So if we could just circulate that
9 order to the committee --

10 THE COURT: Sure.

11 MS. CARLYON: -- that would be great.

12 THE COURT: Sure. Do you want to set it
13 January 17th as well? So January 17th and January 31st.

14 THE CLERK: Instead of the 3rd?

15 THE COURT: Sorry. 3rd, 17th, and 31st.

16 MS. CARLYON: All at 9:30, your Honor?

17 THE COURT: Does that work? We don't know what
18 we're going to do next year for --

19 THE CLERK: Well, you know what? No, we don't.
20 And, right now, on Wednesday, if we do have a motion
21 calendar, we could set that over to (indiscernible).

22 THE COURT: Yeah. Okay.

23 So at least, you could schedule it in. That way, it
24 keeps my calendar clear. You know, hopefully, we don't need
25 all those times. But at least, we've got them. Okay.

1 Any other housekeeping matters? Okay. Okay.

2 MS. CADISH: Your Honor, I just wanted to clarify
3 whether the court minutes will adequately reflect your
4 ruling or if you need --

5 THE COURT: Oh, I am sorry.

6 MS. CADISH: -- an order submitted.

7 THE COURT: I made my oral findings and
8 conclusions on the record, and I guess Mr. Schwartzer will
9 submit the order, and he'll pass it by you.

10 MS. CADISH: That's fine.

11 THE COURT: Okay. Thank you.

12 MR. SCHWARTZER: Thank you.

13 THE COURT: All right.

14 MS. CARLYON: Thank you, your Honor.

15 THE COURT: Thank you, everybody.

16 UNIDENTIFIED SPEAKER: Thank you.

17 (Colloquy not on the record.)

18 THE CLERK: All rise.

19 (Court concluded at 10:53:53 a.m.)
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25

1 I certify that the foregoing is a correct transcript
2 from the electronic sound recording of the proceedings in
3 the above-entitled matter.

4
5
6 /s/ Lisa L. Cline

09/07/06

7 Lisa L. Cline, Transcriptionist

Date